

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6600 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

MOHMMAD SAEED NAGIRBHAI ANSARI

Versus

COMMISSIONER OF POLICE

Appearance:

MR ANIL S DAVE for Petitioner

MR SP DAVE AGP for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 01/12/97

ORAL JUDGEMENT

1. By this application under Article 226 of the Constitution of India, the petitioner calls in question, the legality and validity of the detention order, passed by the Police Commissioner, Ahmedabad city on 8.7.1997, invoking the powers under section 3(2) of the Gujarat Prevention of Anti-social Activities Act, 1985 (hereinafter referred to as 'the Act').

2. In order to appreciate the rival contentions few facts may be stated. Against the petitioner in Kagadapith Police Station, a complaint for the offences punishable under section 365, 394 and 125B of IPC came to be lodged. During the course of investigation, it was found that the petitioner was habituated in committing one or the another offence, and was a terror to the society as he was a head strong person and a hector. Every one was apprehending any wrong being done to him. After the inquiry, it was also found that the petitioner was committing the offences of robbery, decoity or theft often and extorting money putting the persons to imminent danger of injury and death. He was also demanding vehicle for his use and those who did not yeild to his desires or whims or proposals, they were severely beaten and were made to bend his way. Every one had, therefore, cultivated a feeling that unwillingness to succum to the whims or desire of the petitioner would amount to inviting the death warrant. No one was therefore darring to comeforward and state against him, or initiate the legal action. After toilsome great efforts, some of the persons came forward to give statements, but on condition that the facts disclosing their identity would remain wrapped. Because of such neferious activities creating panic in the society and a challenge to the maintenance of public order, the police thought that it was necessary to heavily come down upon the petitioner, so that the people who had cultivated the feeling of insecurity could be made free and the public order could well be maintained. The Police Commissioner then found that to curb the anti-social activities of the petitioner, there was no way out but to detain him passing the order of detention as the ordinary laws were sounding dull. The Police Commissioner of the city of Ahmedabad then passed the order in question on 8.7.1997, pursuant to which, the petitioner has been detained. He, by this petition, challenges the legality and validity of the order of detention.

3. On different grounds, the learned advocate for the petitioner assailed the order, but during the course of hearing, I could marked that it would not be necessary to deal with all those grounds and determine the same as on one of the grounds goes to the root of the matter, and if that ground is dealt with, the petition can well be disposed of. It is the ground about the exercise of the previlege vested under sec. 9(2) of the Act. When that is the case, I will confine myself to that ground only.

4. It is submitted on behalf of the petitioner that

there was no just cause to exercise the discretion vested under sec. 9(2) of the Act. The detaining authority ought to have supplied necessary particulars about the witnesses so as to have the effective representation against the order, but without any just cause, when the particulars were suppressed, the petitioner did not get the reasonable opportunity to represent his case. With the result, the detention was required to be held illegal. On behalf of the respondents, it is submitted that the order was in consonance with the requirements of law and exercise of privilege was just and proper. There is no cause to interfere with the order passed.

5. It would be better if the law about the non-disclosure of certain facts is elucidated. Reading Article 22 (5) of the Constitution of India, what becomes clear is that the grounds on which order of detention has been made are required to be communicated to the detenu and further an opportunity of making the representation against the order of detention is required to be given. The detenu is therefore required to be informed not merely factual inference and factual material which led to inference namely not to disclose the certain facts but also the sources from which the factual material is gathered. The disclosure of sources would enable the detenu to draw the attention of the detaining authority in the course of his representation to the fact whether the factual material collected from such sources would be relied upon and used against him on the facts and circumstances of the case. Subject to the limitation mentioned in Article 22(6) of the Constitution of India and Section 9(2) of the Act, the detaining authority is empowered to withhold such facts and particulars the disclosure of which he considers to be against the public interest. The privilege of non-disclosure has been exercised sparingly and in those cases where public interest dictating non-disclosure overrides the public interest requiring disclosure. Hence the detaining authority must be fully satisfied on the basis of overall study that the apprehension expressed by the informant is honest, genuine and reasonable in the circumstances of the case. With a view to satisfy itself whether the fear of violence and consequential feelings of insecurity or apprehension of a wrong would be done to them at any time by the detenu by those making statement against the detenu is imaginary or fanciful; or an empty excuse or well-founded for disclosing or not disclosing certain facts or particulars of those persons the authority making the order has to make necessary inquiry personally. What can be deduced from such constitutional as well as legal scheme whereunder obligation to furnish

the grounds and the duty to consider whether the disclosure of any facts involved therein is against public interest are both vested in the detaining authority and not in any other. The authority passing the order of detention has to apply his mind and should itself be satisfied to the question whether or not the supply of the relevant particulars and materials would be injurious to the public interest. If he has assigned the task of inquiry to some one else, he has to apply his mind to the report made to him and decide whether privilege should be exercised. If he mechanically endorses or accepts the recommendation of some one or subordinate authority in that behalf, the exercise of power would be vitiated as arbitrary. What is further required is that the detaining authority must file his affidavit to satisfy the Court that he had sincerely and honestly applied his mind for the bonafide exercise of the powers about disclosure and privilege regarding non-disclosure so that the court can examine rational connection between the ground disclosed or not disclosed in public interest. If no affidavit explaining the exercise of the power is filed, the court can infer against the detaining authority. If the affidavit is filed explaining the exercise of the power the other side may challenge the privilege exercised on the ground that the same is vitiated by factual or legal malafides. For my such view, a reference of a decision in the case of Bai Amina, w/o. Ibrahim Abdul Rahim Alla v. State of Gujarat and others - 22 G.L.R. 1186 held to be the good law by the Full Bench of this Court in the case of Chandrakant N. Patel v. State of Gujarat & Others - 35 (1) [1994(1)] G.L.R. 761, may be made.

6. In view of such law made clear hereinabove, when accordingly in this case, the authority passing the detention order has not preferred to be satisfied personally applying the mind about the fear of the witnesses being honest, genuine and reasonable, and has preferred to accept the report wherein a particular opinion has been expressed by his subordinate. Without even verifying whether his subordinate was right in reaching a particular conclusion or forming a particular opinion, the previledge exercised cannot be said to be in consonance with law, and consequently, the order passed cannot be maintained. There was thus in fact, no justification to exercise the powers under sec. 9(2) of the Act, and keep the particulars about the witnesses secret. The petitioner for want of such particulars, was

deprived of a right to make effective representation.
When that is so, the order of detention cannot be upheld,
and continued detention in this case is illegal.

7. In the result, the petition is allowed and the
order detaining the petitioner is held to be
unconstitutional and illegal. The same is therefore,
quashed. The petitioner is ordered to be released
forthwith if no longer required in any other case. Rule
accordingly made absolute.
